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14 Plaintiff SOPHOS INC., and Counterclaim
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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 FORTINET, INC., a corporation

Case No. 3:13-cv-05831-EMC

19 Plaintiff,

vs.

20 SOPHOS, INC., a corporation, MICHAEL
VALENTINE, an individual, and JASON
CLARK, an individual.

**STIPULATED ORDER RE: DISCOVERY
OF ELECTRONICALLY STORED
INFORMATION**

Judge: Honorable Edward M. Chen

21 Defendants.

22
23 SOPHOS INC. and SOPHOS LTD.,
corporations,

24 Counterclaim Plaintiffs,

vs.

25 FORTINET, INC., a corporation,

26 Counterclaim Defendant.

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and
4 inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.”

5 2. This Order may be modified in the Court’s discretion or by stipulation. The parties
6 shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil
7 Procedure 16 Conference.

8 3. As in all cases, costs may be shifted for disproportionate ESI production requests
9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory
10 discovery tactics are cost-shifting considerations.

11 4. A party’s meaningful compliance with this Order and efforts to promote efficiency and
12 reduce costs will be considered in cost-shifting determinations.

13 5. The parties are expected to comply with the District’s E-Discovery Guidelines
14 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the
15 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer
16 regarding Electronically Stored Information.

17 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
18 shall not include email or other forms of electronic correspondence (collectively “email”). To
19 obtain email parties must propound specific email production requests.

20 7. Email production requests shall only be propounded for specific issues, rather than
21 general discovery of a product or business.

22 8. Email production requests shall be phased to occur after the parties have exchanged
23 initial disclosures and basic documentation about the patents, the prior art, the accused
24 instrumentalities, and the relevant finances. While this provision does not require the production
25 of such information, the Court encourages prompt and early production of this information to
26 promote efficient and economical streamlining of the case.

1 9. Email production requests shall identify the custodian, search terms, and time frame.
2 The parties shall cooperate to identify the proper custodians, proper search terms and proper
3 timeframe as set forth in the Guidelines.

4 10. The parties can request email production from a total of fifteen custodians per
5 producing party. The parties may jointly agree to modify this limit without the Court's leave.
6 The Court shall consider contested requests for additional custodians, upon showing a distinct
7 need based on the size, complexity, and issues of this specific case. Cost-shifting may be
8 considered as part of any such request.

9 11. For each custodian, the parties may request eleven search terms comprising (i) the
10 opposing party's name (e.g., Fortinet, Sophos) plus, (ii) ten additional search terms. The parties
11 may jointly agree to modify this limit without the Court's leave. The Court shall consider
12 contested requests for additional search terms per custodian, upon showing a distinct need based
13 on the size, complexity, and issues of this specific case. The Court encourages the parties to
14 confer on a process to test the efficacy of the search terms. The search terms shall be narrowly
15 tailored to particular issues. Indiscriminate terms, such as the producing company's name or its
16 product name, are inappropriate unless combined with narrowing search criteria that sufficiently
17 reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g.,
18 "computer" and "system") narrows the search and shall count as a single search term. A
19 disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens
20 the search, and thus each word or phrase shall count as a separate search term unless they are
21 variants of the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is
22 encouraged to limit the production and shall be considered when determining whether to shift
23 costs for disproportionate discovery. Should a party serve email production requests with search
24 terms beyond the limits agreed to by the parties or granted by the Court pursuant to this
25 paragraph, this shall be considered in determining whether any party shall bear all reasonable
26 costs caused by such additional discovery.

1 12. Nothing in this Order prevents the parties from agreeing to use technology assisted
2 review and other techniques insofar as their use improves the efficacy of discovery. Such topics
3 should be discussed pursuant to the District's E-Discovery Guidelines.

4

5 DATED: May 15, 2014

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17 DATED: May 15, 2014

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29 Plaintiff SOPHOS INC. and Counterclaim
30 Plaintiff SOPHOS LTD.

SIGNATURE ATTESTATION

Pursuant to Local Rule 5.1(i)(3), I attest under penalty of perjury that concurrence in the
filing of this document has been obtained from Sean C. Cunningham.

25 /s/ John M. Neukom

26

27 John M. Neukom

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2
3

4 DATED: _____
5 5/16/14
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